

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 5-82:

BUTTE TEACHERS UNION, LOCAL 332,  
AFT, AFL-CIO,

Complainant,

- vs -

BUTTE SCHOOL DISTRICT NO. 1, BOARD  
OF TRUSTEES AND SUPERINTENDENT  
WILLIAM C. MILLIGAN,

Defendant.

FINAL ORDER

\*\*\*\*\*

No exceptions having been filed, pursuant to ARM 24.26.215,  
to the Findings of Fact, Conclusions of Law and Recommended  
Order issued on May 31, 1983, by Hearing Examiner Kathryn  
Walker;

THEREFORE, this Board adopts that Recommended Order in  
this matter as its FINAL ORDER.

DATED this 29th day of July, 1983.

BOARD OF PERSONNEL APPEALS

By Alan L. Joscelyn  
Chairman

\*\*\*\*\*

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy  
of this document was mailed to the following on the 2nd day  
of July, 1983:

August  
Business Agent/Counsel  
Butte Teachers Union, Local 332  
125 West Granite Street  
P.O. Box 717  
Butte, MT 59703

Donald C. Robinson  
Robert C. Brown  
POORE, ROTH & ROBINSON, P.C.  
1341 Harrison Avenue  
Butte, MT 59701-1898

Janifer Jacobson

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BUTTE TEACHERS UNION, LOCAL 332,  
AFT, AFL-CIO,  
  
Complainant,  
  
-vs-  
  
BUTTE SCHOOL DISTRICT NO. 1, BOARD  
OF TRUSTEES AND SUPERINTENDENT  
WILLIAM C. MILLIGAN,  
  
Defendants.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER.

On March 22, 1982, the Butte Teachers Union Local 332, AFT, AFL-CIO filed an unfair labor practice charge with this Board alleging that the Butte School District No. 1 Board of Trustees and Superintendent William C. Milligan had violated section 39-31-401(1) MCA by interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in section 39-31-201 MCA and section 39-31-401(5) MCA by refusing to bargain collectively in good faith. Specifically, Complainant alleged Defendants committed these unfair labor practices when they made an "ultimatum proposal" and set the mill levy during negotiations for a new collective bargaining agreement.

On April 8, 1982, this Board received Defendants' Answer denying the charges.

The hearing in this matter was held October 7, 1982, in Butte, Montana. The hearing was held under the authority of section 39-31-406 MCA and as provided for by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA. Kathryn Walker was the Board's duly appointed hearing examiner. J. Brian Tierney, attorney at law, represented the Complainant. Donald C. Robinson and Robert C. Brown, attorneys at law, represented the Defendants.

This matter was deemed submitted the day the last brief was postmarked, February 28, 1983.

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1 Chairman of the School Board.

2 The letter stated:

3 We have your communication opening labor contract negotiations for your  
4 contract covering the 1982-83 school year. At this time we would like  
to make a very serious and sincere proposal to you and state our reasons  
for this proposal.

5 As you are undoubtedly aware, at this particular time in Butte the  
6 community is in a very unsettling transition period. As Trustees of  
the District we must evaluate a number of things going on within the  
7 community before we can make final decisions about budgets, operation  
of facilities and programs, and our collective bargaining agreements.  
8 There are a number of both negative and positive indicators that we  
must consider.

9 With regard to negative or cautionary measures, we are faced with the  
10 economic realities not only of Butte, but of Western Montana and the  
United States. Our copper industry is apparently having great difficulty,  
11 and suggestions or rumors of closure of Butte's operations abound. (We  
have no better information or foresight about that than anyone else in  
12 the community at this time.) The general slowdown of construction, retail  
businesses, housing starts, and other businesses is going to have an  
13 effect upon our operations next year. Preliminary indications are that  
our school population will decline.

14 Given the present facts there is a strong indication that our School  
15 District should seriously consider closures of certain facilities and  
cutbacks in both programs and personnel. However, we also believe that  
16 there are reasons why every effort should be made to avoid such a decision  
at this time. In the first place, we--like the members of your union--  
17 are extremely reluctant to reduce services and facilities in our District  
to the students. Secondly, such a move at this time would be, in our  
18 opinion, psychologically damaging to the community as a whole, not only  
in terms of the morale of our students, parents, and District employees,  
19 but also in the effect that it may have in discouraging new businesses  
and development that may be on the verge of coming to the Butte area.  
20 Thirdly, if closures and cutbacks are made, and if we find at a later  
time that certain programs and personnel have to be added, it is always  
21 difficult to re-establish programs and personnel. Furthermore, we must  
also give consideration to the fact that at the present time the Catholic  
22 school system in our community is apparently also undergoing re-evaluation  
and that any decisions affecting that school system may have an effect  
23 upon, and must be considered by, the public school system.

24 In summary, this is a particularly difficult time for the School District,  
or any other operation in Butte, to make long-term decisions. However,  
25 we believe that there are compelling reasons why we should attempt, if  
at all possible, to maintain as much of a status quo position as possible  
26 until the spring of 1983. We believe that at that time both our nation's  
and our community's situation will be much more clear, perhaps signifi-  
27 cantly better or perhaps considerably worsened, but in any event more  
clear.

28 To operate the present school operations in 1982-83 in a manner  
29 that is comparable to the 1981-1982 programs, it will be necessary to  
maintain as much of a status quo as possible in all aspects of our  
30 operations. There are a number of increasing costs that neither the  
District administration nor our employees can control--utility costs,  
31 physical maintenance and supply costs, and other costs controlled by  
third parties. However, 85.5% of our budget goes to wage and salary  
32 expenses for all District employees. Even a modest 5% increase in all

1 wages and related expenses would require the District to increase its  
2 budgets an additional \$750,000. We do not believe that given all of  
3 the present circumstances it is an appropriate time to both increase  
4 wage expenses and to maintain the same level of facilities, programs,  
5 and personnel. We would opt for the latter situation if at all possible.

6 Consequently, the Trustees of the District are prepared to discuss with  
7 your union and all unions in the District, the following proposition:  
8 That in consideration for your agreement to leave the present agreement  
9 in full force and effect for the 1982-83 school year, the District will  
10 make every effort to maintain present facilities, programs, and personnel  
11 presently employed by the District, to the extent that it is feasible to  
12 do so. An agreement by your union not to open the contract for one year,  
13 we believe, would be a very meaningful statement to the parents and tax-  
14 payers in this community that all of us in the District are prepared to  
15 work together and make some sacrifices for both our students and our  
16 employees. Such an agreement, or at least your positive reaction to such  
17 a proposal, would give us the opportunity to discuss in specific terms  
18 the kinds of employment guarantees that would be of concern to your mem-  
19 bership.

20 This letter is being sent to all unions, and we would urge that all of  
21 the unions communicate with both their membership and each other before  
22 responding. We hope that you will accept this communication in the  
23 spirit of our good faith and sincere effort to work with our employees,  
24 in a mutual effort to maintain both our school programs and the level of  
25 our present personnel.

26 Thank you for your serious consideration of these matters.

27 (Emphasis added; Joint Exhibit No. 2)

28 7. The parties' March 3, 1982, negotiations meeting was postponed at the  
29 request of the Teachers Union. The request for continuance was related to the  
30 Teachers Union's receipt of the School Board's and Superintendent Milligan's  
31 March 1, 1982, letter (cited above).

32 8. On March 15, 1982, the Teachers Union and the School Board held the  
first formal negotiations meeting on their 1982-1983 contract.

At that meeting, the Teachers Union proposed a 15% increase in wages;  
the School Board proposed a freeze on wages.

Excerpts of the Teachers Union's minutes of that meeting indicate the  
following regarding the School Board's and Superintendent Milligan's March  
1, 1982, letter to the Teachers Union:

- "Mr. Fischer's opening statement to the Union addressed the letter  
which the trustees had presented to the Union and asked for a re-  
sponse to that letter." (Mr. Fischer was a School Board member and  
its chief negotiator).
- "Mr. Fischer . . . went on to say the position of the board still  
remains the position in this letter . . ."
- "Mr. Fischer countered the letter was of great impact to the district  
and personnel and said they would like a simple yes or no. He

1 continued, this is a very serious proposal and we are ready, willing  
and able to make concessions."

2 - "Mr. Fischer told the union people, if they accept the contents of the  
3 letter, negotiations are concluded, if not we will start from the be-  
ginning."

4 - "Mr. Mason [the Teachers Union's chief negotiator] stated it was not  
5 a matter of a simple yes or no, that they had other proposals that  
6 are non-economic, some are economic, but that they were here to nego-  
tiate and if that (the letter) is a proposal they will look at it and  
hope the board will look at their proposals in the same way."

7 - "... Mr. Fischer indicated the board was going to offer the letter  
8 as a proposal on wages and that they have proposals in addition to  
9 that which are non-monetary issues, however, if the union accepts the  
letter the board would be flexible with the rest of the proposals."

10 - "Mr. Fischer explained that as a district the board looks very seri-  
11 ously at the letter relative to maintaining jobs, etc; there are  
12 going to be some serious implications and economic supply gets worse  
each year, this year being the worst; the union is asking 15% in-  
crease, the district is giving the status quo and some guarantees. .  
13 . . Mr. Fischer added they could work with the other proposals if  
they get some response to the letter. Mr. Rosa [a Union negotiator]  
14 stated they did not want to zero in on one proposal Mr. Goodman  
[a School District negotiator] said if the union rejects the letter  
totally, the negotiations will continue."

15 - "Mr. Fischer again requested the union's consideration of the letter  
16 stating it was more than just a proposal, the board had to set the  
mill levy (Regular Board Meeting for March was scheduled for 7:30  
17 this same nite [sic]) and in the event this was set they would like an  
answer yes or no to how the letter looks to this committee."

18 - "To Mr. Rosa's question, if we (union) by requesting a raise are we  
19 going to lose jobs, Mr. Fischer replied, possibly. Mr. Milligan  
asked if Mr. Rosa was referring to attrition, Mr. Rosa replied, no,  
20 he meant if they did not accept the letter. If by receiving a raise  
from the School District, Mr. Rosa asked, the possibility exists the  
21 union will be losing jobs? Mr. Fischer replied, if it comes to the  
situation that we find it necessary to consolidate schools, then you  
22 will find excess personnel in all areas."

23 - "Mr. Fischer told the union if they sacrificed raises we (the commit-  
tee) will take to the board a commitment to maintain staff, if the  
24 union comes in for a 10% increase, the district cannot maintain  
buildings with a 10% raise. If you wish to maintain the status quo,  
25 Mr. Fischer continued, we will maintain the district as it is - if  
you do not like this option, then tell us."

26 - "Mr. Fischer explained if the union accepts the status quo it means  
27 we leave the blue book in force, that means you do not get an in-  
crease in wages. If you have some non-monetary items we might sit  
28 down and look at those things. All monetary issues would have to be  
off the board, other issues could be considered."

29 - "Mr. Fischer stated they would agree to no ruff [sic], however,  
30 reserve the right in the event of attrition we not fill that job;  
no reduction in force; we will not close any school if you agree  
31 to the contents of the letter; we do not want this to cost (the  
Union) and will agree to pick up the insurance factor, etc. The  
32 decision with respect to the mill levy being run is the decision of

1 the board. Mr. Mason asked with regards to negotiations if Mr.  
2 Fischer meant just the letter to be considered. Mr. Fischer replied  
3 all monetary items except insurance would be off the table, that they  
would like all things off the table but they would be a little flex-  
ible."

4 - "Mr. Fischer advised March 16 was the last date to set mill levy."

5 (Excerpts from Complainant's Exhibit No. 4)

6 9. On March 15, 1982, the School Board held its regular monthly meeting  
7 after its negotiating session with the Teachers Union. Therefore at the time  
8 of this meeting the School Board had just received the Teachers Union's re-  
9 quest for a 15% wage increase in its 1982-1983 contract.

10 10. At this March 15, 1982, School Board meeting, the School Board  
11 set the mill levy request to be presented to the voters.

12 Due to the state of the local economy, the School Board was interested  
13 in containing costs, i.e., running a "bare-bones" budget, when setting this  
14 mill levy.

15 The dollar amount of the mill levy request was \$420,214 less than it had  
16 been the previous year. However, due to a \$1,000,000 increase in State  
17 Foundation Program revenue, the total funds to be available to the School  
18 Board were larger than those of the preceding year.

19 The mill levy request included a 2.7% increase in personnel costs to  
20 take care of "automatic" costs such as longevity and advances on the salary  
21 schedule. However, at this meeting Superintendent Milligan indicated that  
22 while the mill levies reflected the status quo with no wage increases, if  
23 necessary the health insurance costs could be taken out of the general fund  
24 and put into the comprehensive insurance fund.

25 11. Personnel in Superintendent Milligan's office had prepared the  
26 data regarding the setting of the mill levy request prior to receipt of the  
27 Teachers' Union's request for a 15% wage increase in its 1982-1983 contract.

28 12. Superintendent Milligan had distributed the agenda for the March  
29 15, 1982, School Board meeting on March 10, 1982. That agenda and backup  
30 information had notified School Board members that they would discuss setting  
31 the mill levy request at the March 15, 1982, meeting.

32 13. At the March 15, 1982, School Board meeting, the School Board

1 decided to hold the mill levy election on April 6, 1982, so that it would  
2 coincide with the election of School Board members, thereby minimizing the  
3 costs associated with holding the elections and maximizing voter turnout.

4 To hold the mill levy elections April 6, 1982, the School Board had  
5 to set the mill levy request by March 16, 1982.

6 14. The mill levy requests for the elementary and high schools passed  
7 on April 6, 1982.

8 The mill levy for the Vocational Technical Center failed on April 6, 1982.  
9 That mill levy request was presented to and passed by the voters at a lower  
10 amount the second time it was run (at the time of the primary election in  
11 June, 1982).

12 15. The parties continued to negotiate their collective bargaining  
13 agreement during the spring and summer of 1982, with the Teachers Union going  
14 on strike at the end of August, 1982.

15 16. On September 1, 1982, the parties made and entered into a settle-  
16 ment agreement which provided, among other things, for a 3% increase on the  
17 base of the salary schedule and a 1.5% increase in health and welfare contri-  
18 butions, or a 4.5% increase in monetary items over and above the 2.7% built-in  
19 increases.

#### 20 DISCUSSION

21 The unfair labor practices under Montana's Collective Bargaining Act for  
22 Public Employees (Title 39, Chapter 31, MCA) alleged in this matter were:

23 39-31-401. Unfair labor practices of public employer. It is an  
24 unfair labor practice for a public employer to:

25 (1) interfere with, restrain, or coerce employees in the exercise  
26 of the rights guaranteed in 39-31-201;

(2) . . .

26 (3) . . .

(4) . . .

27 (5) refuse to bargain collectively in good faith with an exclusive  
representative.

28 Section 39-31-201 MCA states:

29 39-31-201. Public employees protected in right of self-organization.  
30 Public employees shall have and shall be protected in the exercise of  
31 the right of self-organization, to form, join, or assist any labor or-  
32 ganization, to bargain collectively through representatives of their  
own choosing on questions of wages, hours, fringe benefits, and other  
conditions of employment, and to engage in other concerted activities  
for the purpose of collective bargaining or other mutual aid or pro-  
tection free from interference, restraint, or coercion.



1 The Act defines the duty to bargain collectively in good faith as:

2 39-31-305. Duty to bargain collectively -- good faith. (1) The  
3 public employer and the exclusive representative, through appropriate  
4 officials or their representatives, shall have the authority and the  
5 duty to bargain collectively. This duty extends to the obligation to  
6 bargain collectively in good faith as set forth in subsection (2) of  
7 this section.

8 (2) For the purpose of this chapter, to bargain collectively is  
9 the performance of the mutual obligation of the public employer or  
10 his designated representatives and the representatives of the exclu-  
11 sive representative to meet at reasonable times and negotiate in good  
12 faith with respect to wages, hours, fringe benefits, and other con-  
13 ditions of employment or the negotiation of an agreement or any question  
14 arising thereunder and the execution of a written contract incorporating  
15 any agreement reached. Such obligation does not compel either party to  
16 agree to a proposal or require the making of a concession.

17 (3) . . .

18 Did Defendants violate section 39-31-401(1) and (5) MCA by making an "ulti-  
19 matum proposal" in their letter to Complainant dated March 1, 1982?

20 This issue was specified in Complainant's unfair labor practice charge.  
21 While it was never withdrawn, it was neither developed at the hearing nor  
22 mentioned in Complainant's post-hearing brief. Therefore, to determine the  
23 issue, the hearing examiner relied on Finding of Fact No. 6, which cited  
24 Defendants' March 1, 1982, letter to Complainant in its entirety, and Finding  
25 of Fact No. 8, which contained excerpts of Complainant's minutes of the  
26 parties' March 15, 1982, bargaining session.

27 The hearing examiner's review of Defendants' March 1, 1982, letter to  
28 Complainant indicated that the authors were presenting a "very serious and  
29 sincere proposal," stating the reasons therefor, encouraging full discussion  
30 of the proposal, and inviting Complainant's response to the proposal.

31 The hearing examiner's review of Defendants' presentation of the March  
32 1, 1982, letter as a formal proposal at the parties' March 15, 1982, bar-  
gaining session indicated that Defendants' negotiators referred to the letter  
as a proposal and stressed that they were "ready, willing and able" to make  
concessions on it, repeatedly asked for a response to the proposal -- indi-  
cating that they were prepared to continue bargaining whether Complainant's  
answer was "yes" or "no," and expressed their willingness to address other  
proposals just as soon as it got some response to the proposal.

The findings established that Defendants did specify cutbacks in per-

1 sonnel as a possible ramification of increased costs to the District, particu-  
2 larly increased costs related to wages. However, the hearing examiner inter-  
3 pretted this as frank discussion of economic concerns, not as the issuance of  
4 an ultimatum.

5 In summation, the hearing examiner did not find that either the language  
6 of Defendants' March 1, 1982, letter or Defendants' presentation of that letter  
7 as a proposal at the March 15, 1982, bargaining session could be found violative  
8 of sections 39-31-401(1) and (5) MCA.

9 Did Defendants violate sections 39-31-401(1) and (5) MCA by setting the 1982-  
10 1983 mill levy request before "substantially completing" negotiations for the  
11 parties' 1982-1983 contract?

12 In reaching her decision on this issue, the hearing examiner took par-  
13 ticular note of the following:

14 1. Defendants attended their first negotiating session with Complainant  
15 and received Complainant's initial wage demand for the parties' 1982-1983  
16 contract on the same night it set the School District's 1982-1983 mill levy  
17 request, March 15, 1982. However, examination of the circumstances of this  
18 situation revealed:

19 a. Complainant failed to establish that it was necessarily incumbent  
20 on Defendants to schedule the parties' first negotiating session. However,  
21 even if it was Defendants' responsibility to do so, there was no evidence  
22 Complainant had in any way encouraged Defendants to commence negotiations at  
23 an earlier date. Absent any evidence that Complainant had pressed for an  
24 earlier starting date, attempted to submit its initial proposal before March  
25 15, 1982, or been thwarted in an attempt to get negotiations going previously,  
26 the hearing examiner had to conclude that Complainant at least tacitly con-  
27 curred with Defendants' actions regarding commencement of negotiations.

28 b. Defendants had scheduled a bargaining session with Complainant for  
29 March <sup>ku</sup>3, 1982, which was two weeks before they set the mill levy request.  
30 This meeting was postponed at the Complainant's request.

31 2. Defendants demonstrated reasonable grounds for setting the mill levy  
32 election for April 6, 1982. To hold the mill levy election so it coincided

1 with the Trustee election on April 6, 1982, Defendants were obligated to set  
2 the mill levy request by March 16, 1982, in accordance with section 20-20-204  
3 (1) MCA which provides:

4 When the trustees of any district call a school election, they shall  
5 give notice of the election not less than 20 days or more than 30 days  
6 before the day of the election . . .

7 3. Defendants remained willing and able to negotiate wages with Com-  
8 plainant even though the mill levy request was going to be set/was set.

9 a. At the parties' March 15, 1982, negotiating session, Defendants'  
10 negotiators repeatedly expressed willingness to negotiate. Prior to this they  
11 had received the agenda and backup information for the regular School Board  
12 meeting which was also scheduled for March 15, 1982. Therefore, they were  
13 willing to negotiate even though they knew they were going to set the mill  
14 levy in just a few hours.

15 To reach this conclusion, the hearing examiner noted that section 39-  
16 31-305 (2) MCA states that the obligation to bargain collectively in good  
17 faith does not compel either party to agree to a proposal or require the making  
18 of a concession.

19 b. As indicated by Superintendent Milligan at the March 15, 1982,  
20 School Board meeting, Defendants were aware they could finance a negotiated  
21 deviation from the status quo salary schedule through the budgetary process,  
22 i.e., by transferring funds or costs from one category to another.

23 Along the same lines, Defendants' March 1, 1982, letter which consti-  
24 tuted their proposal at the March 15, 1982, bargaining session, indicated the  
25 School District would fund any negotiated wage increases one way or another.

26 In conclusion, the fact situation in this matter did not establish that  
27 Defendants' setting of the 1982-1983 mill levy request was intended to, could  
28 reasonably have been interpreted as an effort to, or did in fact impinge  
29 upon Complainant's collective bargaining rights. Basing her conclusion that  
30 Defendants' actions did not violate sections 39-31-401(1) and (5) MCA on the  
31 facts alone, it was not necessary for the hearing examiner to address the  
32 ultimate question in this matter, i.e., whether a School District's right and  
responsibility to set the mill levy request can be limited by the prohibition

1 against interfering with, coercing, or restraining employees in the exercise  
2 of their collective bargaining rights or by its duty to bargain collectively  
3 in good faith.

4 CONCLUSION OF LAW

5 Defendant Butte School District No. 1, Board of Trustees and Superin-  
6 tendent William C. Milligan, did not violate sections 39-31-401(1) and (5)  
7 MCA by making an "ultimatum proposal" and setting the mill levy during  
8 negotiations for a new collective bargaining agreement.

9 RECOMMENDED ORDER

10 This unfair labor practice charge is hereby dismissed.

11 NOTICE

12 Exceptions to these Findings of Fact, Conclusion of Law, and Recommended  
13 Order may be filed with the Board of Personnel Appeals, Capitol Station, Helena,  
14 Montana 59620 within twenty days service thereof.

15 If no exceptions are filed in that time, the Recommended Order shall  
16 become the Final Order of the Board.

17  
18 DATED this 31<sup>st</sup> day of May, 1983.

19 BOARD OF PERSONNEL APPEALS

20  
21 By Kathryn Walker  
22 Kathryn Walker  
23 Hearing Examiner

24 CERTIFICATE OF MAILING

25 I, Kathryn Walker, do hereby certify and state that I did on the  
26 3<sup>rd</sup> day of June, 1983, mail a true and correct copy of the above  
27 Findings of Fact, Conclusion of Law, and Recommended Order to the following:

28 Business Agent/Counsel  
29 Butte Teachers Union, Local 332  
30 125 West Granite Street  
31 P.O. Box 717  
32 Butte, Montana 59703

Donald C. Robinson  
Robert C. Brown  
POORE, ROTH & ROBINSON, P.C.  
Attorneys for the Defendants  
BUTTE SCHOOL DISTRICT NO. 1, et al.  
1341 Harrison Avenue  
Butte, Montana 59701-1898